



UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF CALIFORNIA

In re)	Case No. 06-25455-C-7
JOSE ANTONIO	RESCALVO)))	MC No. MC-1
	Debtor.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MOTION FOR RELIEF FROM AUTOMATIC STAY NOT INTENDED FOR PUBLICATION

These findings of fact and conclusions of law, which are not intended for publication, are rendered in this contested matter pursuant to Federal Rule of Civil Procedure 52 as incorporated by Federal Rules of Bankruptcy Procedure 7052 and 9014.

Jurisdiction

Jurisdiction is founded upon 28 U.S.C. § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(G).



Findings of Fact

Debtor filed his voluntary chapter 7 petition on

December 19, 2006. He scheduled a 2005 Ford Econo Van

("vehicle") as property of the estate. The first meeting of

creditors was held on January 26, 2007. The chapter 7 trustee

filed a report finding that there is no property available for

distribution from the estate over and above that exempted by

the debtor. Debtor was discharged from all dischargeable debts

on March 30, 2007.

On March 8, 2007, Wells Fargo Auto Finance, Inc.

("movant") filed a motion, notice, and declaration requesting that this court vacate the automatic stay to permit movant to repossess the vehicle. According to the debtor's schedules, the fair market value of the vehicle is approximately \$20,000.00. Movant holds a lien on the vehicle in the approximate amount of \$26,650.02. There is no evidence of any other liens against the vehicle.

No opposition to the motion was filed within the time prescribed by Local Bankruptcy Rule 9014-1(f)(1). The parties have consented to taking evidence by affidavit and have not demonstrated that there is any disputed material factual issue. See L. Bankr. R. 9014-1(f)(1). The evidentiary record is closed. Id.

Upon review of the record, the court determined that the written record was adequate and that no oral argument is necessary.

Conclusions of Law

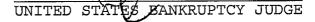
The automatic stay of acts against debtor <u>in personam</u> expires when the debtor is granted a discharge. 11 U.S.C. § 362(c)(2)(C). Acts against property of the estate remain stayed until the earliest of the time when the bankruptcy case is closed, dismissed, or the property ceases to be property of the estate. 11 U.S.C. § 362(c). The automatic stay may be terminated earlier if debtor fails to protect the secured party's interest adequately, § 362(d)(1), and, with respect to a stay of an act against property, debtor does not have equity in the property, § 362(d)(2)(A), and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2)(B). The issue of whether the property is necessary to an effective reorganization is not considered in a chapter 7 case because no reorganization is contemplated in a chapter 7 case.

Although the debtor does not appear to have any equity in the vehicle, since the debtor was granted a discharge, the automatic stay has expired as to the debtor. Thus, the motion insofar as it is directed at the interest of the debtor is moot and will be denied.

However, the motion will be granted as to the interest of the trustee.

An appropriate order will issue.

Dated: April 27, 2007



CERTIFICATE OF SERVICE 1 2 On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said 3 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the 4 United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office. 5 6 Jose Antonio Rescalvo 2731 La Crescenta Drive, #33 7 Cameron Park, CA 95682 8 W. Russell Fields 1792 Tribute Road, #400 9 Sacramento, CA 95815 10 Gene R. Clark Diane V. Weifenbach 11 Michelle R. Ghidotti Miller & Clark, PC 12 9 Executive Circle, Suite 110 Irvine, CA 92614 13 14 John R. Roberts P.O. Box 1506 Placerville, CA 95667 15 Office of the United States Trustee 16 United States Courthouse 501 "I" Street, Suite 7-500 17 Sacramento, CA 95814 18 19 20 21 22

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